

1 LAW OFFICES OF  
2 **WALKUP, MELODIA, KELLY & SCHOENBERGER**  
3 A PROFESSIONAL CORPORATION

4 650 CALIFORNIA STREET, 26<sup>TH</sup> FLOOR  
5 SAN FRANCISCO, CALIFORNIA 94108-2615  
6 T: (415) 981-7210 · F: (415) 391-6965

7 MICHAEL A. KELLY (Ca. State Bar #71460)  
8 [mkelly@walkuplawoffice.com](mailto:mkelly@walkuplawoffice.com)  
9 RICHARD H. SCHOENBERGER (Ca. State Bar #122190)  
10 [rschoenberger@walkuplawoffice.com](mailto:rschoenberger@walkuplawoffice.com)  
11 MATTHEW D. DAVIS (Ca. State Bar #141986)  
12 [mdavis@walkuplawoffice.com](mailto:mdavis@walkuplawoffice.com)  
13 ASHCON MINOIEFAR (Ca. State Bar #347583)  
14 [aminoiefar@walkuplawoffice.com](mailto:aminoiefar@walkuplawoffice.com)

15 SHANIN SPECTER, (Pennsylvania State Bar No. 40928)  
16 [shanin.specter@klinespecter.com](mailto:shanin.specter@klinespecter.com)  
17 (Pro Hac Vice Application Pending)

18 ALEX VAN DYKE (Ca. State Bar No. 340379)  
19 [Alex.VanDyke@klinespecter.com](mailto:Alex.VanDyke@klinespecter.com)

20 KLINE & SPECTER, P.C.  
21 1525 Locust Street  
22 Philadelphia, PA 19102  
23 Telephone: (215) 772-1000  
24 Facsimile: (215) 772-1359

25 **ATTORNEYS FOR ALL PLAINTIFFS**

26 UNITED STATES DISTRICT COURT

27 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

28 JANE ROE, an individual; MARY ROE,  
19 an individual; SUSAN ROE, an  
20 individual; JOHN ROE, an individual;  
21 BARBARA ROE, an individual;  
22 PHOENIX HOTEL SF, LLC, a California  
23 limited liability company; FUNKY FUN,  
24 LLC, a California limited liability  
25 company; and 2930 EL CAMINO, LLC, a  
26 California limited liability company,

Case No. 4:24-cv-01562-JST

**FIRST AMENDED COMPLAINT  
FOR INJUNCTIVE AND  
EQUITABLE RELIEF**

**ASSIGNED FOR ALL PURPOSES  
TO THE HONORABLE JON S.  
TIGAR, COURTROOM 6**

27 Plaintiffs,

28 v.

CITY AND COUNTY OF SAN  
26 FRANCISCO, a California public entity,

27 Defendant.

## I. INTRODUCTION

1. The Tenderloin neighborhood lies in the heart of San Francisco, bounded on the north by Geary Street, the east by Mason Street, the south by Market Street, and the west by Polk Street.

2. The Tenderloin has been a downtown residential community since shortly after the California Gold Rush in 1849. It was among the first districts in San Francisco to be integrated, and to this day remains culturally, racially, and ethnically diverse.

3. Many families call the Tenderloin their home. Over 3,000 children live there, more per capita than almost any other district in San Francisco.

4. Living in the Tenderloin is affordable compared to other San Francisco neighborhoods. Many residents work in the service industry and earn low, hourly wages. Many are disabled or are senior citizens who must get by on fixed incomes.

5. The Tenderloin has been a place where entrepreneurs with little capital, from the hardworking owner of a sandwich shop to the operator of a boutique hotel, can start a business.

6. Plaintiffs are residents of and stakeholders in the Tenderloin. Today, they and others who live, go to school, work or run a business in that district face an existential crisis caused by defendant City and County of San Francisco's treatment of their neighborhood as a "containment zone" for narcotic activities. For years, the policy of the City has been to corral and confine illegal drug dealing and usage, and the associated injurious behaviors, to the Tenderloin. The City tries to keep such crimes and nuisances out of other San Francisco neighborhoods by "containing" them

1 in the Tenderloin.

2       7.     Over the past six or so years, fentanyl and other potent, highly  
 3 addictive, and deadly synthetic opiates have come to dominate the narcotics market  
 4 in the Tenderloin.<sup>1</sup> Fentanyl’s “effects include extreme happiness, drowsiness,  
 5 nausea, confusion, constipation, sedation, tolerance, addiction, respiratory depression  
 6 and arrest, unconsciousness, coma, and death.... People addicted to fentanyl who  
 7 stop using it can have severe withdrawal symptoms that begin as early as a few  
 8 hours after the drug was last taken. These symptoms include: muscle and bone pain;  
 9 sleep problems; diarrhea and vomiting; cold flashes with goose bumps; uncontrollable  
 10 leg movements; [and] severe cravings. These symptoms can be extremely  
 11 uncomfortable....”<sup>2</sup> Fentanyl addicts engage in “compulsive drug seeking and use  
 12 despite adverse consequences,”<sup>3</sup> such as refusing treatment, losing employment,  
 13 alienating and breaking contact with family and friends, living on the streets,  
 14 ignoring personal hygiene, and resorting to crime to support their habit.

15       8.     Today, the City actively and purposefully herds fentanyl users into the  
 16 Tenderloin. Once in the Tenderloin, addicts quickly learn that the City and others  
 17 will support them if they use fentanyl while living on that neighborhood’s sidewalks,  
 18 with some City-sponsored organizations going so far as to deliver drug paraphernalia  
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 22  
 23

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24       <sup>1</sup> <https://www.sfchronicle.com/projects/san-francisco-drug-overdose-deaths/#:~:text=In%20recent%20years%2C%20that%20epidemic,to%20address%20the%20escalating%20epidemic>.

25       <sup>2</sup> <https://nida.nih.gov/publications/drugfacts/fentanyl>

26       <sup>3</sup> <https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/drug-misuse-addiction#:~:text=Addiction%20is%20defined%20as%20a,stress%2C%20and%20self%2Dcontrol>.

1 to their sidewalk encampments.

2       9.     Addicts living on the Tenderloin's sidewalks foreseeably support their  
 3 habit by stealing (e.g., shoplifting, car break-ins, burglaries, robberies) and hawking  
 4 the stolen merchandise on the sidewalks. As their disease progresses, their mental  
 5 and physical health declines, resulting in them acting erratically, ignoring serious  
 6 medical problems, rummaging through trash, discarding garbage on the sidewalk  
 7 around them, going partially clothed, and defecating in public.

8       10.    Drug dealers know that the City herds addicts to the Tenderloin and  
 9 allows them to use drugs in public there. Dealers thus flock to the neighborhood and  
 10 blatantly sell drugs to addicts living on the sidewalks. The City knows that the  
 11 dealers in the Tenderloin belong to competing gangs, and that they use intimidation,  
 12 threats and violence to protect their market.

13       11.    The City's acts and omissions have harmed and damaged each plaintiff  
 14 as set forth below. However, they do not seek to recover money damages from the  
 15 City in this lawsuit. Rather, they bring this action to stop the City from treating the  
 16 Tenderloin as a containment zone. Plaintiffs sue to force the City to redress and  
 17 correct the harms flowing from its active mistreatment of their neighborhood.

18                   **II. THE CITY CONDUCT THAT HARMS PLAINTIFFS.**

19       12.    There is no therapeutic benefit to, and nothing compassionate about,  
 20 allowing those in the throes of addiction to live, ingest drugs and deteriorate on the  
 21 Tenderloin's sidewalks. To the contrary, it is cruel to the addicts and their loved ones  
 22 and families. It also renders the sidewalks and other public spaces in the  
 23 neighborhood unsanitary, unsafe and inaccessible, causing great harm to plaintiffs.

1 The City actively encourages addicts to live and use drugs on the Tenderloin's  
 2 sidewalks. Examples of the City's affirmative conduct in this regard include:  
 3

4 **A. The City directly and indirectly distributes drug paraphernalia to addicts that it  
 allows to live on the sidewalks of the Tenderloin.**

5 13. Plaintiffs are informed and believe, and on that basis allege, that the  
 6 City directly and indirectly distributes drug paraphernalia to addicts who live in  
 7 sidewalk tents and encampments in the Tenderloin.  
 8

9 14. Plaintiffs are informed and believe, and on that basis allege, that the  
 10 City's Department of Public Health and other City departments and agencies  
 11 distribute and/or facilitate the distribution of drug paraphernalia, including fentanyl  
 12 smoking kits, to addicts who opt to live on the Tenderloin's sidewalks, often using  
 13 euphemisms like "harm reduction" or "personal autonomy" in documents and public  
 14 statements to conceal and disguise the true nature of such activities.  
 15

16 15. Plaintiffs are informed and believe, and on that basis allege, that the  
 17 City pays millions to nonprofit entities and other organizations that the City knows  
 18 to distribute drug paraphernalia to addicts that live on the Tenderloin's sidewalks.<sup>4</sup>  
 19

20 16. The effects and consequences of the City's direct and indirect  
 21 distribution of drug paraphernalia to addicts living the Tenderloin's sidewalks are  
 22 foreseeable, devastating and lasting to plaintiffs, as described below.  
 23

24 **B. The City actively supports addicts who refuse offers of shelter and instead live in  
 25 Tenderloin sidewalk encampments.**

26 17. The City's "Street Medicine team" provides "street-based" services to the  
 27 homeless "who are currently rejecting shelter" and instead opt to live on the  
 28

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<sup>4</sup> <https://www.sfchronicle.com/bayarea/article/sf-fentanyl-foil-pipes-19563872.php>

1 Tenderloin's sidewalk.

2       18. The City's "Best Neighborhood Program" offers "street-based care" and  
 3 distributes kits and outreach supplies to addicts who refuse offers of shelter and  
 4 instead live on the Tenderloin's sidewalks.  
 5

6       19. The City's "Night Navigator" program provides "on the spot" services,  
 7 kits, supplies and resources to addicts who refuse offers of shelter and instead live on  
 8 the Tenderloin's sidewalks.

9       20. The City's "Joint Field Operations" supports individuals "experiencing  
 10 homelessness or struggling with substance use disorders" who refuse offers of shelter  
 11 and instead live in encampments on the Tenderloin's sidewalks.  
 12

13       21. The City would never actively provide similar encouragement, support  
 14 and services to addicts who refused offers of shelter and instead camped on the  
 15 sidewalks of San Francisco's more affluent, less diverse neighborhoods.  
 16

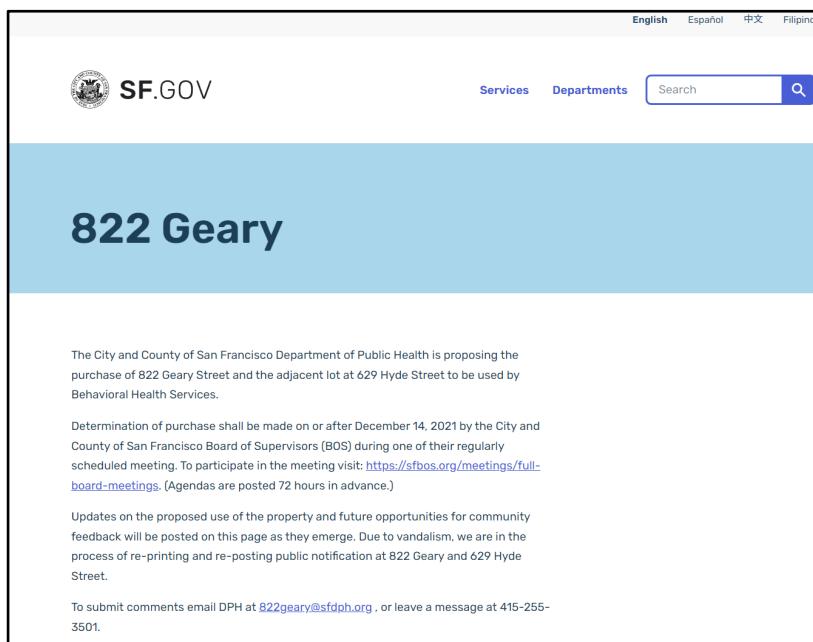
17 **C. The City opened and operated an illegal narcotics consumption site that drew addicts  
 18 and dealers to the Tenderloin.**

19       22. It is a crime under California law, punishable by up to one year in  
 20 prison, to open or maintain a place for the purpose of unlawfully using any controlled  
 21 substance such as fentanyl.<sup>5</sup> Similarly, federal law makes it a felony, punishable by  
 22 imprisonment up to 20 years, to manage or control any place for the purpose of  
 23 unlawfully using a controlled substance such as fentanyl.<sup>6</sup>  
 24

25 \_\_\_\_\_  
 26 <sup>5</sup> California Health & Safety Code §§ 11365, 11366.  
 27

28 <sup>6</sup> 21 U.S.C. § 856. "The statute forbids opening and maintaining any place for visitors  
 to come use drugs." *United States v. Safehouse*, 985 F.3d 225, 243 (3rd Cir. 2021)  
 (declaring that a nonprofit that intentionally opens its facility to visitors it knows  
 will use drugs there violates 21 U.S.C.A. § 856).

1           23. The City, on actual notice of these criminal statutes, nevertheless  
 2 purchased 822 Geary Street, a building in the Tenderloin, in December 2021 with the  
 3 intent of operating a narcotics consumption site there. However, because the City  
 4 treats the Tenderloin as a containment zone, the City gave no notice to the residents  
 5 and other stakeholders in the Tenderloin of its intent to operate an illegal narcotics  
 6 consumption site in their neighborhood. The only notice that the City gave was this  
 7 vague and uninformative web posting:



19           24. It is unknown to plaintiffs whether the City still plans to open a  
 20 narcotics consumption site at 822 Geary Street. However, the City did open such a  
 21 site at Hyde and Market Streets, called the “Tenderloin Center”, in January 2022.  
 22 The City encouraged addicts to come to the Tenderloin Center to consume fentanyl  
 23 and other narcotics, even though City officials had been explicitly advised, counseled  
 24 and warned that such operations violated state and federal criminal statutes and  
 25 exposed anyone involved with the operation of the center to a criminal penalty.  
 26  
 27

28           25. Plaintiffs are informed and believe that the City instructed members of

1 the San Francisco Police Department to drop off addicts at the Tenderloin Center.

2 26. By opening and operating the Tenderloin Center, the City sent the clear  
 3 and unmistakable message that addicts should come to the Tenderloin to consume  
 4 narcotics.  
 5

6 27. By opening and operating the Tenderloin Center, the City sent the  
 7 message to drug dealers that they could sell fentanyl in the Tenderloin. Foreseeably,  
 8 drug dealers flocked to the Tenderloin to sell fentanyl to the addicts who ingested the  
 9 drug at the Tenderloin Center.

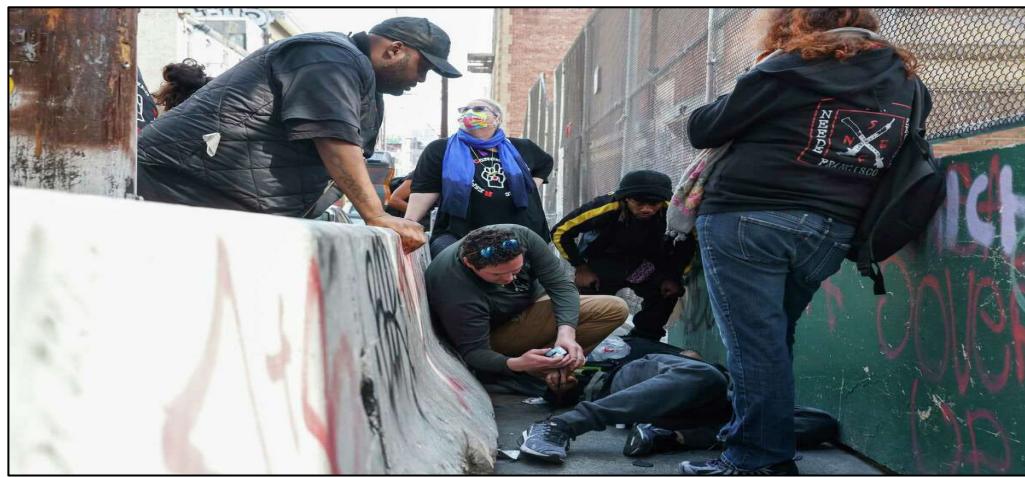
10 28. By opening and operating the Tenderloin Center, the City flaunted the  
 11 law and condoned the sale, purchase and consumption of narcotics in the Tenderloin.  
 12 The harm and damage to plaintiffs was immediate, dramatic and lasting. Narcotics  
 13 sales and use surged. The City shut down the Tenderloin Center in December 2022,  
 14 but the harmful aftereffects of its operations continue to this day because many of  
 15 the addicts and dealers who were drawn to the Tenderloin by the City's operation of  
 16 the Tenderloin Center remain in the neighborhood.  
 17  
 18

19 **D. The City indirectly supported another narcotics consumption site in the Tenderloin.**

20 29. On August 31, 2023, "activists" made a public show of setting up tents  
 21 on Willow Street in the Tenderloin and inviting addicts to come there to collect drug  
 22 paraphernalia and ingest fentanyl. The images below show what took place:  
 23  
 24  
 25  
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Source: <https://sfstandard.com/2023/08/31/san-francisco-activists-pop-up-safe-drug-use-site/>



Source: <https://www.sfchronicle.com/opinion/article/san-francisco-tenderloin-drug-prevention-site-18314454.php>



Source: <https://www.sfchronicle.com/opinion/article/san-francisco-tenderloin-drug-prevention-site-18314454.php>

30. As one news site reported, “At the renegade safe-consumption site, [the

1 reporter] witnessed several people using drugs under the tent while many others  
 2 lined up to obtain fresh materials to consume their drugs with.”<sup>7</sup>

3       31.     The illegal narcotics ingestion site on Willow Street operated only a few  
 4 hundred feet from the Tenderloin Community Elementary School. Seniors and low-  
 5 income families with young children live nearby. The site operated in the middle of  
 6 restaurants and shops in the “Little Saigon” subdistrict of the Tenderloin. These  
 7 businesses were already struggling to stay open in the face of deplorable conditions  
 8 caused by the City’s treatment of area as a containment zone.<sup>8</sup>

9       32.     Plaintiffs are informed and believe, and on that basis allege, that City  
 10 officials had advance notice of the plan to operate the Willow Street site and they  
 11 supported it. A news report quoted a member of the San Francisco Board of  
 12 Supervisors as praising those who ran the site.<sup>9</sup> Plaintiffs are informed and believe,  
 13 and on that basis allege, that employees of a nonprofit that receives hundreds of  
 14 millions of dollars in funding from the City helped set up and operate the site.<sup>10</sup>

15       **E.     The City, with no notice, has opened numerous “centers” in the Tenderloin that  
 16 attract addicts and dealers to the neighborhood.**

17       33.     The City gave no notice to the Tenderloin’s residents and stakeholders  
 18 of its plan to encourage addicts to consume illegal narcotics at 822 Geary Street and  
 19 the Tenderloin Center. Similarly, the City and City-funded organizations, with no  
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25       <sup>7</sup> <https://sfstandard.com/2023/08/31/san-francisco-activists-pop-up-safe-drug-use-site/>

26       <sup>8</sup> <https://sfstandard.com/2024/01/22/san-francisco-little-saigon-homeless-center/>

27       <sup>9</sup> <https://abc7news.com/overdose-awareness-day-2023-san-francisco-tenderloin-safe-injection-sites-pop-up-site/13723380/>

28       <sup>10</sup> See <https://www.sfchronicle.com/opinion/article/san-francisco-tenderloin-drug-prevention-site-18314454.php>; <https://www.sfchronicle.com/bayarea/article/nonprofit-ceo-contract-pay-18667516.php>

1 advance publicity or local input, have opened numerous “wellness,” “service” and  
 2 “support” centers in the Tenderloin under the guise of compassion for substance  
 3 abusers. These centers foreseeably attract even more addicts, and the drug dealers  
 4 who follow their customers. By contrast, earlier this year the City publicly announced  
 5 a plan to open a “sober housing” project near Chinatown, but quickly scrapped that  
 6 plan because of public opposition.<sup>11</sup>

8 **F. After actively herding addicts and dealers to the Tenderloin, the City does not  
 9 enforce the laws that they foreseeably break.**

10 34. After herding addicts and dealers into the neighborhood, the City does  
 11 not enforce narcotics laws that they foreseeably violate and other crimes that they  
 12 foreseeably commit. Thus, large crowds gather on Tenderloin sidewalks and freely  
 13 sell, buy, and use illegal narcotics, fight, commit thefts, and hawk stolen goods.<sup>12</sup> The  
 14 image below shows a McAllister Street sidewalk shortly after midnight.

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25 <sup>11</sup> <https://www.sfchronicle.com/bayarea/article/sf-breed-drug-crisis-chinatown-sober-living-18678670.php>

26 <sup>12</sup> See <https://sfstandard.com/2024/03/07/san-francisco-kids-selling-drugs-stolen-goods/> The City recently decided to enforce the laws that prohibit illegal street vending in the Mission neighborhood. The City has not done the same in the Tenderloin. Foreseeably, illegal street vending increased in the Tenderloin after the City’s crackdown in the Mission.



35. The City has allowed what is seen above to become the rule, not the exception, in the Tenderloin. It is inconceivable that the City would tolerate such late-night turmoil in Pacific Heights, the Inner Sunset, Alamo Square, Bernal Heights, or Telegraph Hill.

36. Foreseeably, the City's containment zone policy has led to violence in the public spaces of the Tenderloin. There have been drug-related murders, stabbings and gun battles on the streets and sidewalks.

37. In sum, the City-owned sidewalks in the Tenderloin are dangerous, unsanitary and no longer open and accessible to plaintiffs. The consequences of the containment zone policy to plaintiffs have been devastating. It has deprived the two disabled plaintiffs in this suit of the full and equal use of the Tenderloin's sidewalks and public spaces. It is both a public and a private nuisance to all plaintiffs. These state-created dangers violate all of plaintiffs' due process rights.

### III. JURISDICTION AND VENUE

38. Plaintiffs assert the claims herein pursuant to the Americans with

Disabilities Act, 42 U.S.C. §§ 12131 et seq. (the “ADA”); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 794 et seq. (“Section 504”). This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1367, 2201 & 2202.

39. This Court has supplemental jurisdiction over plaintiffs' state law claims pursuant to 28 U.S.C. § 1337, as they arise from the same case or controversy as plaintiffs' federal claims.

40. Plaintiffs only seek equitable and injunctive relief for their state law claims. Accordingly, plaintiffs need not submit a claim with any local public entity pursuant to the California Tort Claims Act, California Government Code §§ 810 *et seq.*

41. The acts and omissions complained of herein occurred in the Northern District of California. Accordingly, pursuant to 28 U.S.C. § 1391, venue is proper in this Judicial District.

#### IV. INTRADISTRICT ASSIGNMENT

42. The events or omissions that give rise to the claims asserted herein occurred within the City and County of San Francisco, and the property that is the subject of this action is situated in the City and County of San Francisco.

## V. THE PARTIES

## A. Plaintiff Jane Roe

43. Plaintiff Jane Roe is a pseudonym and not her real name.

44. Jane Roe works full-time as a housekeeper. She is married. Her husband works full-time as a cook. Both are immigrants. Neither speaks much English. They have two daughters, ages 9 and 5. The family lives in an apartment on Ellis Street, between Hyde and Larkin, in the center of the Tenderloin. They share

1 the apartment with another family with young children.

2       45.   Jane Roe and her family live steps from the COVA Hotel, on the same  
 3 block of Ellis Street between Hyde and Larkin. Before 2020, a private party operated  
 4 the 95-unit COVA as a tourist hotel. The COVA catered to out-of-town guests who  
 5 brought vibrancy and commerce to the Tenderloin.

6       46.   However, the City leased the COVA starting in 2020. The City now runs  
 7 it as “non-congregate shelter.”

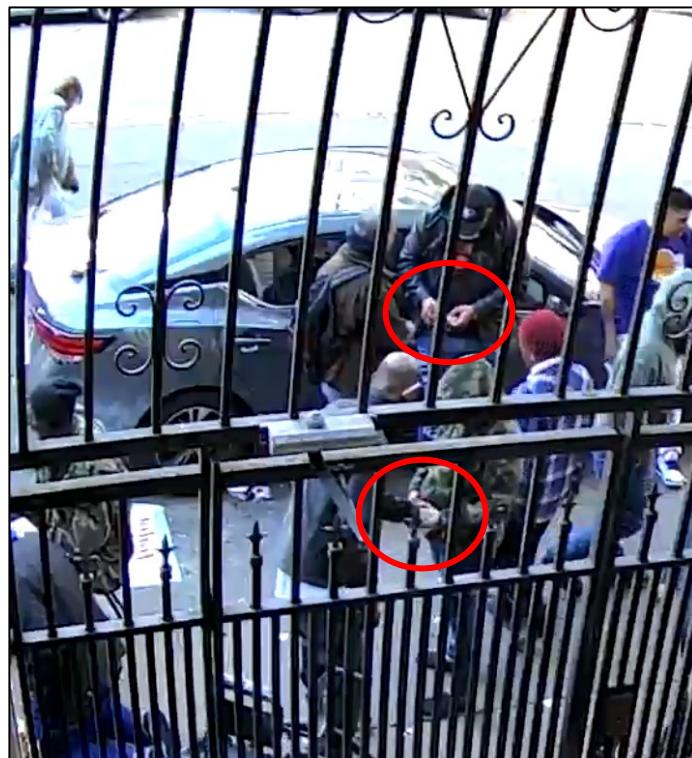
8       47.   Anyone who comes to San Francisco and claims to be homeless is  
 9 eligible to stay at the COVA. Those that the City selects and allows to live at the  
 10 COVA get a private room with a private bathroom and two free meals a day. The City  
 11 charges no rent or room-and-board. The City does not limit to how long they can stay.  
 12 Some occupants have lived at the COVA, rent free, for several years.

13       48.   The City follows a so-called “housing first” approach with respect to the  
 14 COVA, and allows its “tenants” to continue to live there, rent-free, even if they use  
 15 and sell narcotics on or around the property, or engage in other harmful behavior in  
 16 and around the property. Foreseeably, illegal narcotics use became rampant inside  
 17 and around the COVA after the City took over operations. One citizen journalist  
 18 reports that there have been at least 12 overdose deaths inside the COVA since the  
 19 City began running the facility.

20       49.   As a result of the City’s management of the COVA, the property has  
 21 become a magnet for illegal and dangerous narcotics activities in the surrounding  
 22 neighborhood, including directly in front of Jane Roe’s apartment building. As the  
 23 images below show, the public sidewalks in front of the COVA are blocked by

1 encampments of addicts, crowds of dangerous drug dealers and numerous hazards.  
 2 The operation of the COVA exposes those that reside close by, like Jane Roe, to  
 3 unreasonable danger and harm. The City know this, and yet recently extended its  
 4 operations of the COVA for another seven months.  
 5

6       50.     As a consequence of the City's acts, open-air drug deals occur on the  
 7 sidewalk in front of Jane Roe's apartment building. She describes the drug-dealing as  
 8 happening "all day, every day." Those involved in narcotics sales block the entrance  
 9 to her building. The image below shows a typical scene, including blatant drug  
 10 transactions.  
 11



24       51.     When Jane Roe enters or leaves her apartment, she encounters drug  
 25 dealers, users openly injecting or smoking narcotics, and people lying on the sidewalk  
 26 who appear unconscious or dead. On one occasion, she cleared garbage from the steps  
 27 of her apartment building and got stuck by a used syringe.  
 28

1       52.   On one occasion, a person in front of Jane Roe's building threatened to  
2 cut her throat. On other occasions, people threatened her with knives and hammers.  
3

4       53.   People gathered in front of the family's apartment building sometimes  
5 start smokey bonfires, using things like old tires, trash, or discarded furniture as  
6 fuel. One of Jane Roe's daughters has severe asthma and cannot tolerate smoke. Jane  
7 Roe has politely asked people in front of the building not to burn things for the sake  
8 of her daughter's health. They responded by threatening to kill her. The City does  
9 nothing to stop the sidewalk fires.

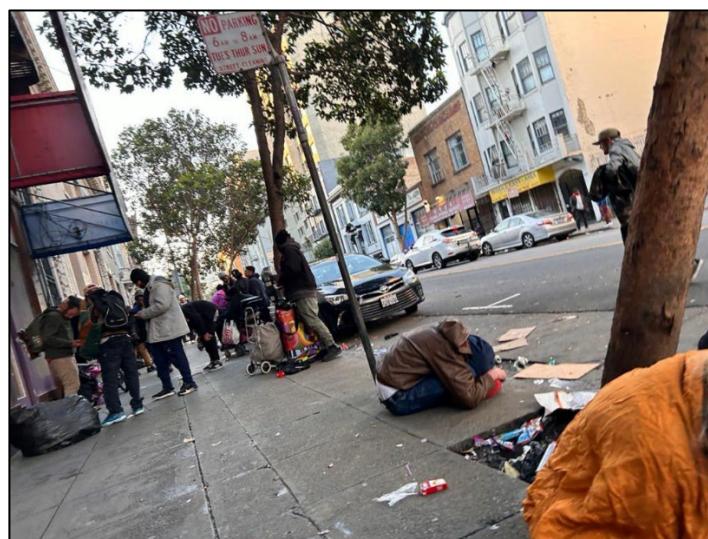
10      54.   Encampments and bulky items block the sidewalk in front of Jane Roe's  
11 apartment. Habitants of the encampments keep unleashed dogs that bark and growl  
12 at Jane Roe and her family when they pass. Displays of stolen goods for sale block  
13 the sidewalk. Trash and biohazards, such as used syringes and feces, litter the area.  
14 She and her husband and daughters must step into the busy street to bypass these  
15 hazards, dangers and obstacles.

16      55.   The images below depict typical conditions that Jane Doe and her family  
17 encounter when they go outside. The sidewalk directly in front of the COVA, mere  
18 steps from their home, is visible in several of the images.

19            ///

20            ///

21            ///





56. Jane Roe rarely sees uniformed members of the San Francisco Police

1 Department on foot patrol in the neighborhood. When she has seen SFPD officers,  
 2 she has asked for help with the people who have taken over the sidewalks. In  
 3 response, officers have told her that there is nothing they can do because, “the City  
 4 gives them more protection than you.”  
 5

6       57. Every school day morning, Jane Roe escorts her daughters to the bus  
 7 stop and then rides with them to their school. She does the same thing in reverse in  
 8 the afternoon. She is terrified for her daughters’ safety each time she makes the trip.  
 9 Her girls can never be outside unless accompanied by her or her husband.  
 10

11       58. When Jane Roe ventures out of her apartment, either alone or with  
 12 family, she “is really scared because when I walk, I am always afraid something bad  
 13 will happen to us.” She and her husband are not high wage earners. She says, “I  
 14 really wish my daughters could grow up in a better place, which does not have so  
 15 much corruption, drugs, bad people. It is a frustration I have every day. We don’t  
 16 have enough money to move.”  
 17

18 **B. Plaintiff Susan Roe**

19       59. Plaintiff Susan Roe is a pseudonym and not her real name. She lives in  
 20 a residence on Eddy Street, between Jones and Leavenworth, in the Tenderloin. She  
 21 is elderly. She is disabled and depends on a walker to ambulate.  
 22

23       60. The sidewalks and public spaces in Susan Roe’s neighborhood are  
 24 impassable and inaccessible to her. Encampments and bulky items, such as duffle  
 25 bags, shopping carts and disassembled bicycles, obstruct the sidewalks.  
 26

27       61. Large crowds also block the sidewalks around Susan Roe’s residence.  
 28 People in these crowds openly smoke and inject drugs, scream and act erratically.

1 She attends community events and receives services at a senior center on Turk  
 2 Street. These events and services are important to her. However, she dreads going to  
 3 the center because intimidating crowds block a corner where she must cross the  
 4 street. She must also be on the lookout for and navigate around excrement, used  
 5 syringes, vomit and garbage. These obstacles make it impossible for her to use the  
 6 sidewalk. She instead walks in the busy street, which is dangerous.  
 7

8 **C. Plaintiff Mary Roe**

9 62. Plaintiff Mary Roe is a pseudonym and not her real name. She is a  
 10 native of San Francisco, a senior citizen and the mother of grown children. She works  
 11 as a counselor. She has pulmonary and spinal conditions that make it difficult for her  
 12 to walk. She lives in the Tenderloin, in an apartment on Turk Street, between Jones  
 13 and Leavenworth. She laments, “My neighborhood has become disgusting and  
 14 dangerous.”

16 63. Crowds of drug dealers and users block the sidewalks around Mary  
 17 Roe’s apartment building. Encampments, stolen goods for sale, carts, disassembled  
 18 bicycles, and other bulky items also obstruct passage. When she ventures outside,  
 19 she has no choice but to jaywalk, which is especially dangerous because her age and  
 20 medical conditions make it difficult for her to avoid moving vehicles.

22 64. Mary Roe sees people inject and smoke narcotics on the sidewalk. She  
 23 must avoid people who scream and act erratically, or who are partially clothed or  
 24 completely naked. She sees people defecate in public. The sidewalks around her home  
 25 are littered with garbage, human waste, and used drug paraphernalia. There have  
 26 been so many overdoses that she often wonders whether a person lying prostrate on  
 27  
 28

1 the sidewalk is dead rather than merely passed out. In sum, whenever she ventures  
 2 outside, she is always afraid and frequently mortified.

3       65. There is a storefront on Mary Roe's block occupied by an organization  
 4 that purports to provide a "community building program." People affiliated with that  
 5 organization hand out fentanyl drug kits, *e.g.*, packets with foil, tubes and smoking  
 6 devices, on the sidewalk in front of the storefront. Crowds gather when these  
 7 handouts occur. When the people finish distributing the kits, they retreat inside the  
 8 storefront, locking the doors behind them. Chaos then ensues. People ingest drugs,  
 9 become intoxicated and act erratically. Mary Roe has observed other citizens try to  
 10 discourage people from ingesting narcotics on the sidewalk, only to have people  
 11 affiliated with the organization come out of the storefront and intercede, proclaiming  
 12 that people have the right to use drugs in public. Plaintiffs are informed and believe,  
 13 and on that basis allege, that the City provides direct and indirect support to this  
 14 organization.  
 15

16       66. Around the corner from Mary Roe's apartment, on the 200 block of  
 17 Leavenworth Street, are three markets that stay open all night. People gather in  
 18 front of these markets, especially after dark. They completely block the sidewalk  
 19 while selling, buying and using drugs and hawking stolen items. The same thing  
 20 happens near many other markets in the Tenderloin. The City would not tolerate  
 21 such nuisances around markets elsewhere, but because the City treats the  
 22 Tenderloin as a containment zone, the City does little to nothing in response.  
 23

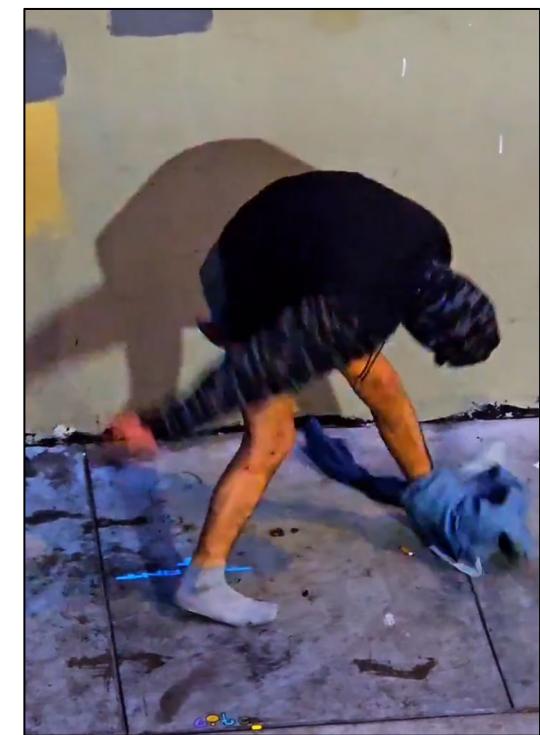
24 **D. Plaintiff John Roe**

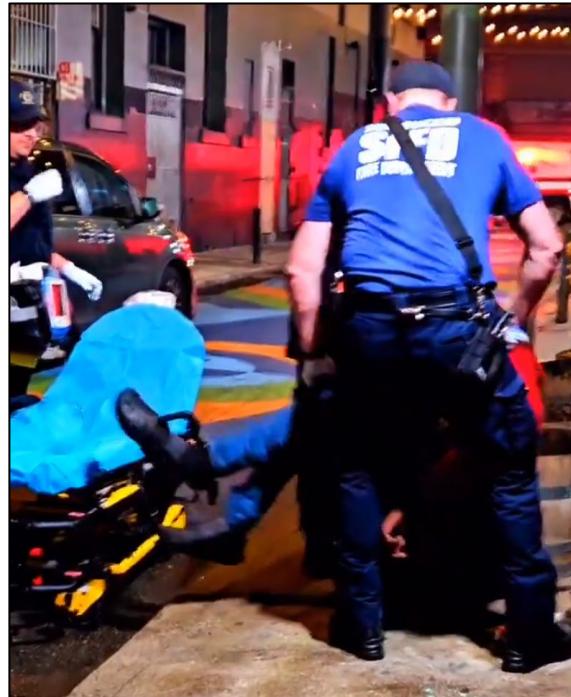
25       67. Plaintiff John Roe is a pseudonym and not his real name. He was born  
 26

1 in South America and has resided in the United States for over 15 years. He is in his  
 2 late 50s. He is a behavioral health worker. About four years ago he and his husband  
 3 purchased a home near the corner of Turk and Larkin Streets in the Tenderloin.  
 4

5       68.     The conditions around his home “logistically and emotionally” affect and  
 6 drain John Doe. Drug deals happen around his residence at all hours. Dealers dress a  
 7 specific way and obviously belong to gangs. They are intimidating. He sees people on  
 8 the sidewalk inject drugs. People light fires in front of his home. He hears people in  
 9 the throes of drug-induced psychotic episodes scream. The medical examiner’s van  
 10 recently blocked his driveway to pick up the corpse of someone who overdosed. The  
 11 images below show what he regularly encounters in front of home:  
 12







13       69. John Roe sometimes hears gunshots. The drug-related violence leaves  
 14 him fearful and in despair. He sees biological hazards and garbage “everywhere” on  
 15 the sidewalks and streets. He recently encountered someone defecating in his  
 16 doorway. When he asked that person to leave, the man threatened him.  
 17

18       70. John Roe cannot walk on the sidewalks around his home because drug  
 19 dealers and addicts gather and block passage. Encampments and stolen goods  
 20 displayed for sale also make the sidewalks impassable. He must step into the street  
 21 to bypass these dangers and obstacles.  
 22

23       71. John Doe regularly reports the problems around his home to the City,  
 24 which rarely responds. Despite the constant open-air crime, John Roe seldom sees  
 25 members of the SFPD on foot patrol in his neighborhood.  
 26

**E. Plaintiff Barbara Roe**

27       72. Plaintiff Barbara Roe is a pseudonym and not her real name. In 2020,  
 28

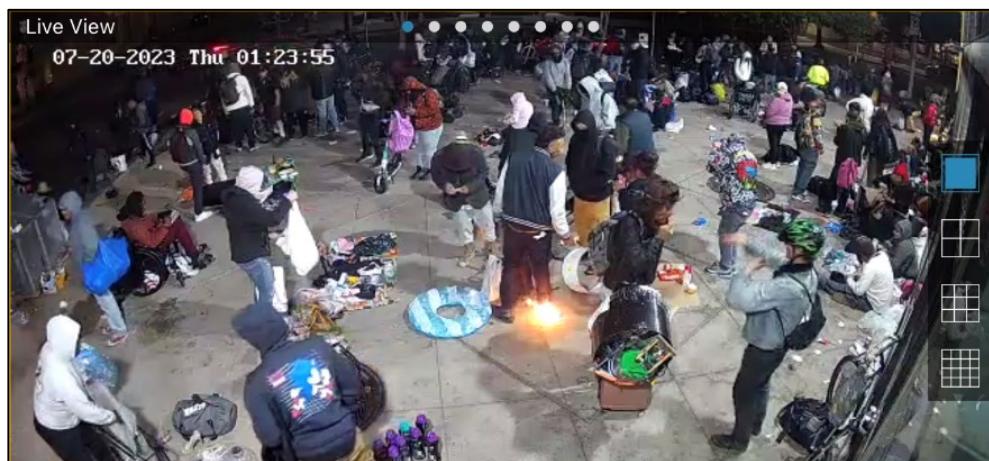
1 she and her husband purchased a condominium in a multi-unit building on  
 2 McAllister Street in the Tenderloin.

3       73. Large crowds gather in front of and around Barbara Roe's building  
 4 every night. The typical after-dark crowd ranges from seventy to over one hundred  
 5 people. Those in the crowd openly sell, inject and smoke drugs, and hawk stolen  
 6 items.

7       74. Barbara Roe finds it "difficult and scary" to navigate through the crowds  
 8 around her residence. People under the influence block the door to her building.  
 9 When she politely asks them to move so that she can pass, she fears that they will  
 10 attack her. Recently, one of her neighbors was attacked and injured at the entrance  
 11 to their building and had to go to the emergency room to receive stitches. There are  
 12 bonfires on the sidewalk. The smoke sometimes triggers her building's fire alarm,  
 13 forcing her and her neighbors to evacuate into the threatening crowd.

14       75. Barbara Roe must step into the busy street to bypass the sidewalk  
 15 obstacles near her building. The images below show typical nighttime conditions in  
 16 front of her building and on nearby sidewalks.

17            ///  
 18            ///  
 19            ///





**F. The Phoenix Hotel Plaintiffs**

76. Plaintiff Phoenix Hotel SF, LLC is a California limited liability company in good standing.

77. A hotel has been in operation at 601 Eddy Street in the Tenderloin since the 1960s. In 1987, an affiliate of plaintiff Phoenix Hotel SF, LLC acquired a leasehold interest in the property, and renovated and converted it into the "Phoenix

1 Hotel.” The Phoenix Hotel has since become a San Francisco landmark and an iconic  
 2 institution in the Tenderloin. The entrance to the Phoenix Hotel is on Eddy Street.  
 3 Larkin Street borders the eastern side of the hotel property.  
 4

5       78. Beginning in 2011, plaintiff Phoenix Hotel SF, LLC took over the  
 6 leasehold interest and operations of the Phoenix Hotel.  
 7

8       79. Plaintiff Funky Fun, LLC is a California limited liability company in  
 9 good standing. In 2011, it opened a restaurant and bar within the Phoenix Hotel  
 10 commonly known as “Chambers Eat + Drink” or the Chambers restaurant.  
 11

12       80. Plaintiffs Phoenix Hotel SF, LLC and Funky Fun, LLC are hereafter  
 13 referred to in the collective as the “Phoenix Hotel Plaintiffs.”  
 14

15       81. The principals of the Phoenix Hotel Plaintiffs care deeply about the  
 16 Tenderloin. Since taking over the hotel and restaurant, the Phoenix Hotel Plaintiffs  
 17 have been committed to improving and promoting the neighborhood.  
 18

19       82. From 1987 through 2019 at the hotel, and from 2011 through 2019 at  
 20 the restaurant, business was vibrant. Operations brought many visitors to the  
 21 Tenderloin and put the neighborhood in a favorable light. Guests of the hotel  
 22 included famous musicians, artists and celebrities. People from all over the world  
 23 dined at the Chambers restaurant and gave it rave reviews. The Phoenix Hotel  
 24 Plaintiffs employed an average of about 50 people during this time, providing them  
 25 with good jobs in the hospitality industry. The Phoenix Hotel Plaintiffs were proud of  
 26 the employment, business, energy, goodwill and excitement that they brought to the  
 27 Tenderloin.  
 28

29       83. The pandemic of 2020 caused the restaurant to shut down completely  
 30

1 and the hotel to scale back operations. The Phoenix Hotel Plaintiffs, however, were  
 2 determined to survive and continue operations in the Tenderloin when the pandemic  
 3 passed. However, conditions around the Phoenix Hotel have changed and worsened  
 4 considerably since 2019.  
 5

6       84.     Because the City treats the Tenderloin as a containment zone, people  
 7 who appear to be gang members now openly sell fentanyl and other potent drugs  
 8 around the Phoenix Hotel. People freely inject and smoke and ingest drugs on the  
 9 sidewalks around the property.  
 10

11       85.     The Phoenix Hotel Plaintiffs must comply with the Americans with  
 12 Disabilities Act and other laws that mandate that their facilities be open and  
 13 accessible to those with disabilities, e.g., patrons who use a wheelchair. However,  
 14 crowds of hostile people selling and using narcotics block passage of the sidewalks  
 15 abutting the hotel. Encampments, garbage and biological hazards make it difficult or  
 16 impossible for even able-bodied guests and patrons to navigate on the public  
 17 walkways around the hotel. The images below depict typical conditions.  
 18

19            ///

20            ///

21            ///

23

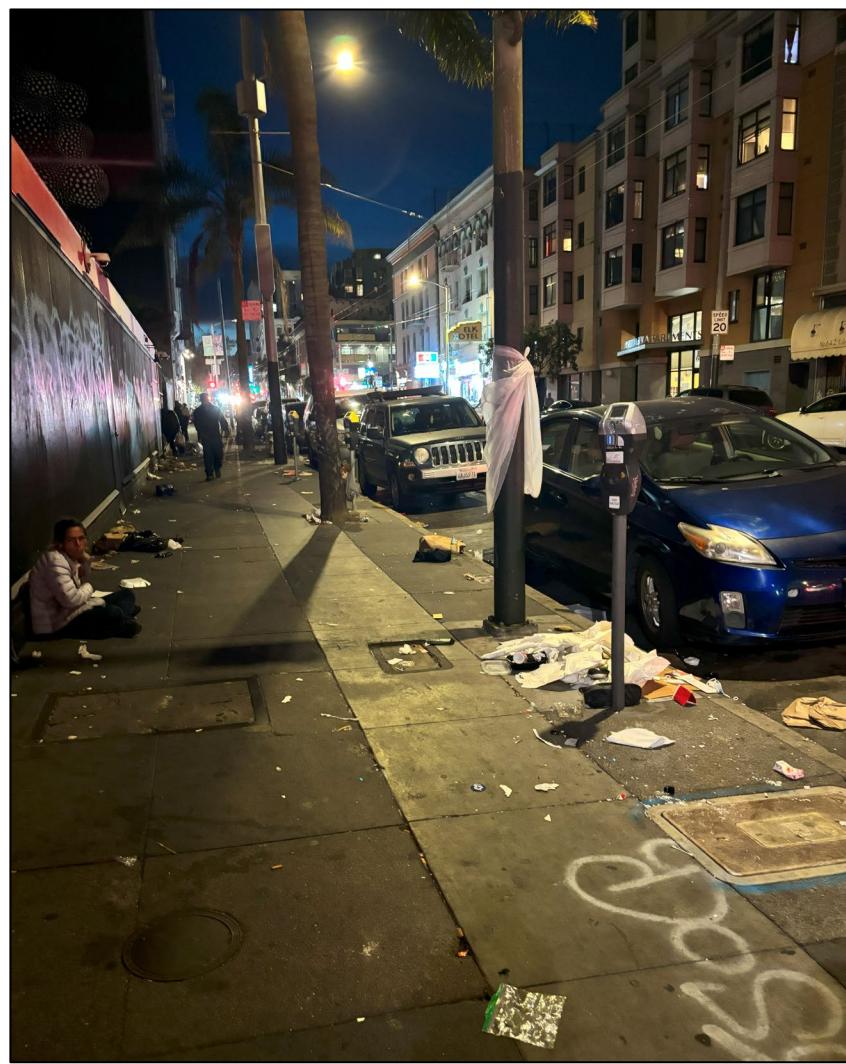
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11        86. The conditions around the Phoenix Hotel scare prospective hotel guests  
12 and restaurant patrons. Current business has plummeted as a result, down by about  
13 two-thirds compared to 2011 to 2019. Below are excerpts from recent emails and  
14 social media reviews:

“The neighborhood is sort of shocking & sad - I have traveled the world & spent significant time in SF many years ago - SF is like a war zone these days - The Tenderloin needs to be cleaned up - at least around the hotel so guests feel safe upon arrival & walking out of the hotel.”

\* \* \* \*

20 "I wanted to give you a little update as we've just spoken to  
21 the client and unfortunately they have decided that they  
22 won't be going ahead with Chambers [restaurant] on this  
23 occasion. They thought the venue was great but there were  
concerns raised by the leadership team about the safety of  
the surrounding area so unfortunately they've had to  
discount it as a dinner venue."

\* \* \* \*

"It's truly just the surroundings that ruin it for the place. Other than that it was a great stay. Sadly the people loitering on the street - doing drugs & burning something were VERY off putting. I generally am comfortable with street people but this was extreme. I know you can't change the neighborhood but I am hesitant to write a review because of that."

1 \*\*\*\*

2 "Good: Hotel was beautiful clean and accommodating  
3 Bad: Location was horrible, homeless everywhere, didn't  
feel safe walking off the hotel parking lot."

4 \*\*\*\*

5 "Know it's a difficult situation but the homeless and drug  
6 dealers on the street corner would probably dissuade me  
from booking at the Phoenix again. Love the staff, vibe but  
7 just don't feel safe walking out of the hotel."

8 \*\*\*\*

9 "This hotel is in a terrible neighborhood. Going out  
10 anywhere was a challenge due to MANY drugged out  
individuals carpeting the sidewalk along with thick litter.  
I'm glad I survived."11 87. The average number of people employed by the Phoenix Hotel Plaintiffs  
12 has dropped to about 20 because of the downturn in business. It is difficult for the  
13 Phoenix Hotel Plaintiffs to retain existing employees and to hire new ones. When a  
14 hotel employee recently asked a trespasser to leave the parking lot, the man struck  
15 the employee on the head with an object. The restaurant has been unable to recruit a  
16 qualified chef because the neighborhood conditions deter applicants.17 88. The lease for the Phoenix Hotel ends in September 2025. Had the  
18 conditions in the Tenderloin in general and around the hotel in particular not  
19 deteriorated, then the Phoenix Hotel Plaintiffs would have renewed the lease. They  
20 want to continue to do business in the Tenderloin. They want to provide good jobs.  
21 They want to continue to improve and promote the neighborhood. However, renewing  
22 a lease is a long-term commitment that requires a reinvestment in the property and  
23 a good-faith belief that customers will patronize the business in the future. The  
24 current conditions around the hotel have caused the Phoenix Hotel Plaintiffs to  
25 decline to renew the lease.

1 **G. The Best Western Plaintiff**

2 89. Plaintiff 2930 El Camino, LLC, a California limited liability company in  
 3 good standing, has an ownership interest in real property located at 700 Eddy Street,  
 4 on the northwest corner of Polk Street, in the Tenderloin. The back of the property  
 5 borders Willow Street. Plaintiff 2930 El Camino, LLC operates a short-term hotel at  
 6 this location that is commonly known as the “Best Western Road Coach Inn.”  
 7 Plaintiff 2930 El Camino, LLC is hereafter referred to as the “Best Western  
 8 Plaintiff.”

9 10 90. The City’s containment zone policy has caused horrific conditions on the  
 11 sidewalks and public spaces around the Best Western Road Coach Inn. Narcotic  
 12 transactions happen around the hotel at all hours. Addicts live in unsanitary  
 13 sidewalk encampments next to the hotel. Hotel staff regularly clean and hose down  
 14 the sidewalks abutting the hotel, but they are quickly re-littered with excrement,  
 15 used syringes and garbage. The image below show trespassers ingesting drugs in the  
 16 parking lot of the hotel, which is open to the street.  
 17  
 18

19       ///

20       ///

21       ///

23

24

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91. The Best Western Plaintiff must comply with the Americans with Disabilities Act and other laws that mandate that its facilities be open and accessible to those with disabilities, *e.g.*, patrons who use a wheelchair. However, the sidewalks around the hotel are inaccessible to guests. The images below show typical conditions on the Polk Street side of the hotel:

20           ///

21           ///

22           ///

23

24

25

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27

28



92. Despite the efforts and hard work of hotel employees, the conditions on  
21 the sidewalks mortify and scare guests. Here are some recent online reviews:  
22

23 “The staff is amazing & work really hard to make their  
24 guests comfortable. That being said; if your room is near  
25 the alley you get to listen to screaming all night and smell  
26 the outside toilet. Every morning the staff has to pressure  
wash the poo off the driveway and sidewalk. The smell  
doesn’t go away. It’s a great hotel. It would be amazing in  
another location and where guests felt safe.”

27 \*\*\*\*

28 “Sirens every 20 minutes, homeless and drugs were on all

streets surrounding the hotel. Trash on all the sidewalks, as well as people, sleeping and living there."

\* \* \* \*

“Typical Best Western but the area is terrible. Lots of homeless, drugged people. Walking is not recommended.”

\* \* \* \*

“There’s a lot of noise from homeless people at night, hard to sleep and unsafe to walk at night.”

## H. Defendant City and County of San Francisco

9           93.    Defendant City and County of San Francisco is a municipal entity  
10           existing under the laws of the State of California, with the capacity to sue and be  
11           sued.

## VI. CLAIMS FOR RELIEF

## FIRST CLAIM FOR RELIEF

## **Violation of Title II of the Americans with Disabilities Act**

42 U.S.C. §§ 12131 *et seq.*

(Plaintiffs Mary Roe and Susan Roe)

16       94. Plaintiffs Mary Roe and Susan Roe re-allege and incorporate herein by  
17 this reference each and every allegation set forth in Paragraphs 1 through 93 of this  
18 Complaint as though set forth fully herein.  
19

20        95. The ADA provides that people with disabilities be afforded “the full and  
21 equal enjoyment of the goods, services, facilities, privileges, advantages, or  
22 accommodations of any place of public accommodation....”<sup>13</sup> Further, the ADA  
23 ensures that transportation facilities are constructed to a set of standards that  
24 ensures accessibility for the disabled. Sidewalks are the most common element of  
25 transportation infrastructure, yet if they are not accessible, they pose great  
26

<sup>13</sup> 42 U.S.C. § 12182(a).

1 challenges and dangers to anyone in a wheelchair, dependent on a walker, or who  
 2 has other mobility restrictions.

3       96. Sidewalks are subject to the access requirements of Title II of the ADA  
 4 and § 504 of the Rehabilitation Act.<sup>14</sup> Accordingly, sidewalk width requirements  
 5 ensure that sidewalks are accessible for use by wheelchair-bound individuals.

6       97. The minimum width for an ADA-compliant sidewalk is 36 inches.<sup>15</sup> “A  
 7 public entity shall maintain an operable working condition those features of facilities  
 8 and equipment that are required to be readily accessible to and usable by persons  
 9 with disabilities by the Act or this part.”<sup>16</sup>

10     98. Throughout the Tenderloin, the City fails to uphold its obligations to  
 11 maintain clear and accessible sidewalks and public rights-of-way for its disabled  
 12 residents and visitors, resulting in regular violations of the Americans with  
 13 Disabilities Act. These ADA violations are obvious and known to the City both  
 14 through its own inspections and various reports to the City of blocked sidewalks due  
 15 to illegal sidewalk vending, crowds engaged in narcotics activities, encampments,  
 16 piles of garbage, bicycle “chop shops,” and similar obstructions. The City and its  
 17 agents and employees have failed and continue to fail to provide reasonable  
 18 accommodations for disabled persons using public sidewalks in the Tenderloin.

19     99. The City is obligated to operate the “service, program, or activity” “so

20     

---

 21     <sup>14</sup> *Willits v. City of Los Angeles*, 925 F. Supp. 2d 1089, 1093 (C.D. Cal. 2013) (“Any  
 22 public sidewalk over which the City of Los Angeles has responsibility to inspect and  
 23 notify property owners of repair needs is a ‘program, service, or activity’ within the  
 24 meaning of Title II of the Americans with Disabilities Act and Section 504 of the  
 25 Rehabilitation Act of 1973.”).

26     <sup>15</sup> 36 C.F.R. § 1191, app. D, § 403.5.1 (“the clear width of walking surfaces shall be 36  
 27 inches (915 mm) minimum”).

28     <sup>16</sup> 28 C.F.R. § 35.133(a).

1 that..., when viewed in its entirety, it is readily accessible to and useable by  
 2 individuals with disabilities.”<sup>17</sup> Yet when “viewed in its entirety” public rights-of-way  
 3 are not provided by the City to be “readily accessible to and useable” by individuals  
 4 bound to wheelchairs and assistive walking devices.  
 5

6       100. The discrimination and denial of access to the City’s rights-of-way for  
 7 persons with disabilities in the Tenderloin is the direct result of the City’s policies  
 8 and practices of tolerating: (a) crowds blocking sidewalks while selling, buying and  
 9 ingesting narcotics; (b) widespread illegal sidewalk vending; (c) encampments; (d)  
 10 garbage and biohazards accumulating on the sidewalks; and (d) activities such as the  
 11 operation of a stolen bicycle chop shops that block the sidewalks. The City has failed  
 12 to adopt or implement any adequate procedures for regularly inspecting and  
 13 maintaining the pedestrian rights-of-way clear of these obstructions.  
 14

15       101. As a direct and proximate result of the aforementioned acts, including  
 16 but not limited to The City’s deliberate indifference to the violation of plaintiffs Mary  
 17 Roe’s and Susan Roe’s federally protected rights, and these plaintiffs have suffered  
 18 pain, humiliation, hardship, anxiety, indignity, and severe mental and emotional  
 19 anguish. This deprives these plaintiffs’ of their independence and prevents them from  
 20 accessing the services and benefits of public establishments.  
 21

22       102. Pursuant to 42 U.S.C. § 12133 and 29 U.S.C. § 794a(b), plaintiffs Mary  
 23 Roe and Susan Roe are entitled to recover reasonable attorneys’ fees and costs  
 24 incurred in bringing this action.  
 25

26                   ///  
 27

---

28       <sup>17</sup> 28 C.F.R. § 35.150(a).

**SECOND CLAIM FOR RELIEF**  
Violation of Section 504 of the Rehabilitation Act  
29 U.S.C. §§ 794 *et seq.*  
(Plaintiffs Mary Roe and Susan Roe)

103. Plaintiffs Mary Roe and Susan Roe re-allege and incorporate herein by this reference each and every allegation set forth in Paragraphs 1 through 93 of this Complaint as though set forth fully herein.

104. Section 504 of the Rehabilitation Act of 1973 provides in relevant part:

[N]o otherwise qualified individual with a disability ... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....<sup>18</sup>

12       105. Plaintiffs Mary Roe and Susan Roe are otherwise qualified to  
13 participate in the services, programs, or activities that are provided to individuals in  
14 the City. The City is a recipient of federal financial assistance and therefore subject  
15 to Section 504. The City and its agents and employees have violated and continue to  
16 violate Section 504 of the Rehabilitation Act by excluding plaintiffs Mary Roe and  
17 Susan Roe from participation in, denying them the benefits of, and subjecting them  
18 to discrimination regarding the benefits and services involved in utilizing public  
19 rights-of-way based solely on their disability.  
20

106. Upon information and belief, said discrimination occurred with  
deliberate intent and/or reckless disregard of plaintiffs Mary Roe's and Susan Roe's  
rights. These plaintiffs seek injunctive relief and the cost of attorneys' fees in  
bringing this action.

111

<sup>18</sup> 29 U.S.C. § 794(a).

**THIRD CLAIM FOR RELIEF**  
Violation of California Disabled Persons Act  
California Civil Code §§ 54 *et seq.*  
(Plaintiffs Mary Roe and Susan Roe)

107. Plaintiffs Mary Roe and Susan Roe re-allege and incorporate herein by this reference each and every allegation set forth in Paragraphs 1 through 93 of this Complaint as though set forth fully herein.

108. California's Disabled Persons Act codifies requirements that ensure equal and full access to individuals with disabilities. That Act provides, in part:

Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places.<sup>19</sup>

Further,

Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices . . . and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.<sup>20</sup>

109. Plaintiffs Mary Roe and Susan Roe seek injunctive relief and the cost of attorneys' fees in bringing this action.

**FOURTH CLAIM FOR RELIEF**  
Public Nuisance  
California Civil Code §§ 3490 *et seq.*  
(All Plaintiffs)

110. All plaintiffs re-allege and incorporate herein by this reference each and every allegation set forth in Paragraphs 1 through 93 of this Complaint as though set

<sup>19</sup> Cal. Civ. Code § 54(a).

<sup>20</sup> Cal. Civ. Code § 54.1(a)(1).

1 forth fully herein.

2       111. California has defined nuisance as:

3               Anything which is injurious to health, including, but not  
4               limited to, the illegal sale of controlled substances, or is  
5               indecent or offensive to the senses, or an obstruction to the  
6               free use of property, so as to interfere with the comfortable  
7               enjoyment of life or property, or unlawfully obstructs the  
8               free passage or use, in the customary manner, of,... any  
9               public park, square, street, or highway, is a nuisance.<sup>21</sup>

10       112. The nuisance statute “is an expression of the Legislature’s public policy  
11               against public nuisances, and it is plainly aimed at protecting the public from the  
12               hazards created by public nuisances.”<sup>22</sup> In addition to health and safety hazards, “[a]  
13               reduction in property values caused by activities on a neighboring piece of land, and  
14               an assault on the senses by noise, dust, and odors, are just the kinds of harm that  
15               common law suits to abate a nuisance are designed to redress.”<sup>23</sup> A public nuisance is  
16               the substantial and unreasonable interference with a public right.<sup>24</sup>

17       113. As described above, the City, by its failure to maintain the public  
18               property under its control and to enforce the laws requiring the same, is perpetuating  
19               and facilitating a public nuisance.

20       114. All plaintiffs have experienced a substantial and unreasonable  
21               interference with the enjoyment of their property, whether that be an apartment, a  
22               home, or commercial property, and with their right of free passage and use; each has  
23               suffered and continues to be threatened with respect to his, her, or its health and  
24               welfare, by reason of the crowds blocking sidewalks and public spaces while engaged

---

25  
26       <sup>21</sup> Cal. Civ. Code § 3479.

27       <sup>22</sup> *People v. ConAgra Grocery Prods. Co.*, 17 Cal. App. 5th 51, 136 (2017).

28       <sup>23</sup> *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng’rs*, 101 F.3d 503, 505 (7th Cir. 1996).

29       <sup>24</sup> *San Diego Gas & Elec. Co. v. Superior Court*, 13 Cal. 4th 893, 938 (1996).

1 in illegal narcotic activities and other dangerous and injurious conduct, illegal street  
2 vending, the presence of encampments, trash, human waste, biohazards and other  
3 nuisances on the sidewalks and public spaces outside their homes and businesses.

115. Each plaintiff has been damaged in his, her, or its own right, in a  
5 manner specially injurious to himself, herself, or itself. No plaintiff consented to the  
6 City's conduct.  
7

8       116. Plaintiffs seek injunctive relief and the cost of attorneys' fees in bringing  
9 this action.

**FIFTH CLAIM FOR RELIEF**  
**Private Nuisance**  
**California Civil Code §§ 3501 *et seq.***  
**(All Plaintiffs)**

13        117. All plaintiffs re-allege and incorporate herein by this reference each and  
14 every allegation set forth in Paragraphs 1 through 93 of this Complaint as though set  
15 forth fully herein.

17        118. Each plaintiff owns, leases, occupies, or otherwise controls all of a  
18 portion of the home or business identified. The City's actions and inactions have  
19 created conditions or permitted conditions to exist that are harmful to the health, are  
20 indecent and offensive to the senses, obstruct the free passage and use of public  
21 parks, squares, streets, highway, and sidewalks, permit unlawful sales and  
22 consumption of illicit narcotics, illegal street vending, and constitute a fire hazard, as  
23 described supra.

25        119. The City's conduct has been and is intentional and unreasonable, or  
26        unintentional but negligent or reckless. Alternatively, the conditions permitted to  
27        exist were the result of abnormally dangerous activity that substantially interfered

with each plaintiff's use or enjoyment of his, her, or its land that would reasonably annoy or disturb an ordinary person. No plaintiff consented to the City's conduct; each was harmed; the City's conduct was a substantial factor in causing the harm; and the seriousness of the harm outweighs any public benefit of such conduct.

120. Plaintiffs seek no monetary damages hereunder and assert this cause of action for the purpose of obtaining equitable and injunctive relief only. Accordingly, the City is not entitled to any claim of immunity, pursuant to California Government Code § 814.

**SIXTH CLAIM FOR RELIEF**  
**Violation of Due Process Clause, State-Created Danger Doctrine**  
**42 U.S.C. § 1983; U.S. Const. Amend. XIV**  
**(All Plaintiffs)**

13       121. All plaintiffs re-allege and incorporate herein by this reference each and  
14 every allegation set forth in Paragraphs 1 through 93 of this Complaint as though set  
15 forth fully herein.

16        122. By the acts and omissions described above, the City has affirmatively  
17 created or increased the risk that plaintiffs would be exposed to dangerous  
18 conditions, which placed plaintiffs specifically at risk, and plaintiffs, and each of  
19 them, have been harmed as a result.

123. The City knew or should have known that its acts or omissions  
specifically endangered plaintiffs, and the City was deliberately indifferent thereto.

22       124. Plaintiffs seek injunctive relief and the cost of attorneys' fees in bringing  
23 this action.

## **VII. DEMAND FOR JUDGMENT**

WHEREFORE, plaintiffs pray for judgment against defendant and County of San Francisco, as follows:

1. Injunctive/equitable relief in a manner to be determined by law,

including such relief as is necessary as to redress the harms caused by defendant's affirmative acts;

2. An award of costs of suit, including attorneys' fees, as permitted by law;  
and

3. Such other and further relief as this Court deems just and proper.

Dated: July 26, 2024 WALKUP, MELODIA, KELLY & SCHOENBERGER

KLINE + SPECTER

By:

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MICHAEL A. KELLY  
RICHARD H. SCHOENBERGER  
MATTHEW D. DAVIS  
ASHCON MINOIEFAR

# SHANIN SPECTER ALEX VAN DYKE

Attorneys for Plaintiffs

LAW OFFICES OF  
WALKUP, MELODIA, KELLY  
& SCHOENBERGER  
A PROFESSIONAL CORPORATION  
650 CALIFORNIA STREET  
26TH FLOOR  
SAN FRANCISCO, CA 94108  
(415) 981-7210

1 **PROOF OF SERVICE**

2 **Jane Roe, et al. v. City and County of San Francisco, et al.**  
3 **USDC-Northern California Case No. 4:24-cv-01562-JST**

4 At the time of service, I was over 18 years of age and not a party to this action.  
5 I am employed in the county where the mailing took place. My business address is  
6 650 California Street, 26th Floor, City and County of San Francisco, CA 94108-2615.

7 On the date set forth below, I caused to be served true copies of the following  
8 document(s) described as

9 **FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND EQUITABLE  
10 RELIEF**

11 to:

12 Shanin Specter, Esq.  
(Admitted Pro Hac Vice)  
13 Alex Van Dyke, Esq.  
14 KLINE & SPECTER, P.C.  
15 1525 Locust Street  
16 Philadelphia, PA 19102

17 David Chiu, Esq., City Attorney  
18 Yvonne R. Meré, Esq., Chief Deputy  
19 City Attorney  
20 Wayne Snodgrass, Esq., Deputy City  
21 Attorney  
22 Tara M. Steeley, Esq., Deputy City  
23 Attorney  
24 Thomas S. Lakritz, Esq., Deputy City  
25 Attorney  
26 John H. George, Esq., Deputy City  
27 Attorney  
28 Kaitlyn M. Murphy, Esq., Deputy  
City Attorney  
Deputy City Attorneys  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682

Co-Counsel for Plaintiffs

Telephone: (215) 772-1000  
[shanin.specter@klinespecter.com](mailto:shanin.specter@klinespecter.com)  
[alex.vandyke@klinespecter.com](mailto:alex.vandyke@klinespecter.com)  
[escalanteyleana@uclawsf.edu](mailto:escalanteyleana@uclawsf.edu)

Counsel for City and County of San  
Francisco

Steeley Direct: (415) 554-4655  
Lakritz Direct: (415) 554-4628  
George Direct: (415) 554-4223  
Murphy Direct: (415) 554-6762  
Facsimile: (415) 554-4699  
Mere Direct: (415) 554-4700  
Mere Facsimile: (415) 554-4757  
[Yvonne.Mere@sfcityatty.org](mailto:Yvonne.Mere@sfcityatty.org)  
[tara.steeley@sfcityatty.org](mailto:tara.steeley@sfcityatty.org)  
[tom.lakritz@sfcityatty.org](mailto:tom.lakritz@sfcityatty.org)  
[john.george@sfcityatty.org](mailto:john.george@sfcityatty.org)  
[kaitlyn.murphy@sfcityatty.org](mailto:kaitlyn.murphy@sfcityatty.org)  
[anita.murdock@sfcityatty.org](mailto:anita.murdock@sfcityatty.org)  
[celena.sepulveda@sfcityatty.org](mailto:celena.sepulveda@sfcityatty.org)  
[sophia.garcia@sfcityatty.org](mailto:sophia.garcia@sfcityatty.org)  
[winnie.fong@sfcityatty.org](mailto:winnie.fong@sfcityatty.org)

1 John K. Dipaolo, Esq.  
2 General Counsel  
3 Secretary to the Board of Directors  
4 College of the Law, San Francisco  
5 200 McAllister Street  
6 San Francisco, CA 94102

**Counsel for Plaintiff College of the  
Law, San Francisco**  
(related case USDC-Northern California  
case #4:20-cv-03033-JST)

Telephone: (415) 565-4787  
Facsimile: (415) 565-4825  
[dipaolojohn@uchastings.edu](mailto:dipaolojohn@uchastings.edu)

7 Lauren Hansen, Esq.  
8 Melissa A. Morris, Esq.  
9 Public Interest Law Project  
10 449 15th Street, Suite 301  
11 Oakland, CA 94612-06001

**Counsel for Proposed Intervenors  
Hospitality House; Coalition on  
Homelessness; and Faithful Fools**  
(related case USDC-Northern California  
case #4:20-cv-03033-JST)

Office: (510) 891-9794  
Fax: (510) 891-9727  
[lhansen@pilpca.org](mailto:lhansen@pilpca.org)  
[mmorris@pilpca.org](mailto:mmorris@pilpca.org)

12 Lili V. Graham, Esq.  
13 Tiffany L. Nocon, Esq.  
14 Disability Rights California  
15 350 S. Bixel Street Suite 290  
16 Los Angeles, CA 90017-1418

**Counsel for Proposed Intervenors  
Hospitality House; Coalition on  
Homelessness; and Faithful Fools**  
(related case USDC-Northern California  
case #4:20-cv-03033-JST)

Office: (213) 213-8000  
Fax: (213) 213-8001  
[lili.graham@disabilityrightsca.org](mailto:lili.graham@disabilityrightsca.org)  
[tiffany.nocon@disabilityrightsca.org](mailto:tiffany.nocon@disabilityrightsca.org)

18 Michael David Key, Esq.  
19 Jessica Berger, Esq.  
20 Bay Area Legal Aid  
21 1454 43<sup>rd</sup> Avenue  
22 San Francisco, CA 94122

**Counsel for Proposed Intervenors  
Hospitality House; Coalition on  
Homelessness; and Faithful Fools**  
(related case USDC-Northern California  
case #4:20-cv-03033-JST)

23 Office: (415) 982-1300  
24 Fax: (415) 982-4243  
25 [mkeys@baylegal.org](mailto:mkeys@baylegal.org)  
26 [jberger@baylegal.org](mailto:jberger@baylegal.org)

1 William S. Freeman, Esq.  
2 John Thomas H. Do, Esq.  
3 ACLU Foundation of Northern  
4 California  
5 39 Drumm Street  
6 San Francisco, CA 94111

**Counsel for Amicus Curiae**  
**(ACLU Foundation of Northern**  
**California)**  
(related case USDC-Northern California  
case #4:20-cv-03033-JST)

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25  
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27  
28  
Office: (415) 621-2943  
[wfreeman@aclunc.org](mailto:wfreeman@aclunc.org)  
[jdo@aclunc.org](mailto:jdo@aclunc.org)

**BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 26, 2024, at San Francisco, California.



Kirsten Benzien